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Hearing on the Endangered Species Act

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Statement
by
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Mr. Chairman, members of the committee, thank you for this opportunity to express my views on the Endangered Species Act (ESA) and its impact on water use and people.

In its 32-year history, the ESA has been successful only at demonstrating our lack of understanding of the needs of species and the functions of ecosystems. The truth of our environmental policy is that we are dealing with incredibly complex, evolving systems, and we usually are not certain how best to proceed. Those who contend they are certain are asking the rest of us to rely merely on their belief system, rather than the state of established knowledge.

The ESA does not work for species. Of the approximately 1,300 species listed under the ESA, only a few have warranted delisting and even fewer have been recovered. According to the United States Fish and Wildlife Service's (FWS) online database, http://endangered.fws.gov/, 16 species were delisted because subsequent data showed they should not have been listed in the first place, 9 went extinct, and 15 were deemed recovered.

Whether these 15 species recovered as the result of their ESA listing is debated. Some experts argue that several species designated as recovered should never have been listed to begin with, or were recovered because of independent action by states, private foundations or other laws that affected the species.

But, even if the recovery of all these species is credited to the ESA alone, it is still a dismal showing for almost 35 years of effort and billions of dollars in expense. Clearly, our approach to species protection must change—for the benefit of the species.

The ESA also does not work for people. The overriding problem with the ESA, in addition to the fact it actually fails to protect species, is that it does not balance species protection with human needs. Society must both protect the environment and respect private property rights.

You, the elected representatives of the people, bear the obligation to ensure both of these ends are achieved successfully, fairly, and constitutionally. Although the two ends are not mutually exclusive, the federal government has failed to provide a proper balance.

This type of "species first, people last" reading of the ESA gives more power to federal agencies than any other environmental law. To protect species under the ESA, federal officials exercise authority and control over land and water resources all across the country where listed species exist, are thought to exist, or could exist in the future, and dictate the use or non-use of these resources without regard to state, local, or private ownership or needs. This uncooperative approach results in people versus species, environmental activists versus landowners, and urban communities versus rural communities.

I see the results of this in environmental litigation everyday. In the Pacific Northwest, our ESA water impacts result from salmon listings, including steelhead and bull trout. We are on the front lines of the "water wars" the ESA has created. Strict ESA application—whether it originates from the federal government, environmental activists, or single-minded federal judges—results in unfortunate, even frightening, outcomes when water use is involved. In the arid Western states, water is truly the lifeblood not only of listed species, but the human species.

For example, in the Klamath Basin, at the California-Oregon border, federal officials withheld water from farmers to increase river flows for protected salmon—salmon that do not warrant ESA protection. Nearly all crops were lost that year, along with the livelihoods of hundreds of families. Land that had been farmed for generations dropped in value by ten fold from $2,000 an acre to $200 an acre. Shortly thereafter, the National Academy of Sciences determined shutting off the water was not grounded in science. Lastly, just this year, on January, 11, 2005, I obtained a federal court decision invalidating and holding unlawful the salmon listing which served as the basis for the water shut-off (*California State Grange v. Evans*, Civ. No. 02-6044-HO (D. Or. January 11, 2005)).

I have represented farmers and ranchers in the Methow Valley in Washington (*County of Okanogan v. Nat'l. Marine Fisheries Serv.*, 347 F.3d 1081 (9th Cir. 2003)), in the Central Valley of California (*Modesto Irrigation Dist. v. Gutierrez*, Civ. No. F-02-6553 (E.D. Cal.)), and in Idaho (*Western Watersheds Project v. Jones*, No. 03-35870 (9th Cir.), whose water was cut off in order to protect salmon, steelhead, or bull trout. Currently, I represent farmers in Washington whose ability to utilize pest control products and crop management products is threatened by the ESA, again under the guise of protecting salmon that do not need protecting (*Washington Toxics Coalition v. U.S. Dept. of Interior*, Civ. No. 04-CV-01998 (W.D. Wash.)).

Most recently, great concern is express over the decision of a federal judge in Portland, Oregon, who decided that, although courts have no authority to order the government to tear down dams on the Columbia River, under the ESA a court can certainly decide that the government cannot store water behind the dams. Thus, although the dams remain, apparently in the future they will store no water and generate no electricity. "Species first, people last"—people suffer, and salmon will never come off the threatened species list. The entire landscape of three states will change, and those states' and other states' economies will suffer, even the national economy will be altered negatively . . . to protect salmon that do not need protecting. I will represent on appeal the farmers and ranchers who, far and wide, will be devastated by this narrow-minded decision totally lacking in scientific basis (*Nat'l. Wildlife Fed'n. v. Nat'l. Marine Fisheries Service*, Civ. No. 01-640-RE/05-23-RE (D. Or.)).

I could go on and on with unfortunate stories concerning real people and their real world problems stemming from the ESA. These are just a few examples that highlight the problems an inflexible law creates by failing to balance human needs and species protection.

What is most important is that, quite tragically, the events I have related did not have to happen. There are many we can blame—radical environmentalists, activist federal judges, or rogue federal agencies—but the buck stops with the author of the ESA: Congress.

Throughout my testimony so far, I have referred to the fact that salmon which are causing the "water wars" do not warrant ESA protection. Allow me to explain. On September 12, 2001, I obtained a judgment from the United States District Court for the District of Oregon affirming that NMFS erred in distinguishing between hatchery and naturally spawning salmon in the Oregon Coast coho salmon population. *See Alsea Valley Alliance v. Evans*, 161 F. Supp. 2d 1154 (D. Or. 2001). NMFS was faced with an abundance of Oregon Coast coho, but evaluated for listing purposes only a subset of the coho—naturally spawning coho. NMFS included hatchery coho in the coho population, but refused to include any of those hatchery coho in the listing evaluation because it deemed them "not essential for recovery." The *Alsea* decision invalidated and set aside the eventual illegal listing. The decision is of utmost importance because of its potential impact on the ESA "water wars." ESA impacts concerning water most often stem from salmon listings. The decision should have ended NMFS' practice of treating hatchery salmon differently than naturally spawning salmon.

In response to the District of Oregon's decision, NMFS reevaluated its policies and reviewed all of its salmon and steelhead listings. As a result of its reviews, NMFS published on June 16, 2005, a "Policy on the Consideration of Hatchery-Origin Fish in Endangered Species Act Listing Determinations for Pacific Salmon and Steelhead." (http://www.nwr.noaa.gov/AlseaResponse/20040528/hlp-frn-language.pdf). Under this Policy, NMFS includes in a population not only all naturally spawning salmon, but also those hatchery fish with a level of genetic divergence relative to local natural populations that is no more than what would be expected between closely related populations within the [population]. *Id*. at 6.

In addition, purporting to comply with the *Alsea* decision, NMFS announced it would base status determinations of salmon populations on the entire population. *Id*. However, NMFS also claims in its Policy that the ESA focuses on the conservation and recovery of "natural populations," rather than the species population as a whole. *Id*. Indeed, NMFS claims the ESA does not preclude it from giving "special recognition" to naturally spawned fish as a measure of the sustainability of the natural ecosystem. *Id*. As a result, NMFS re-listed every one of the salmon populations it had review. http://www.nwr.noaa.gov/AlseaResponse/20040528/listing.pdf at 1.

To the contrary, the ESA refers only to "species," "subspecies," and "distinct population segments of species." 16 U.S.C. § 1532(16). Thus, from a legal perspective, nowhere in the ESA's terms, or the ESA's legislative history, did Congress provide authority for treating differently naturally spawning and hatchery salmon as members of the same species. Moreover, no factual basis exists for doing so given that hatchery salmon spend the majority of their lives sustaining themselves in the same "natural ecosystems" as naturally spawning salmon.

Indeed, hatchery salmon often interbreed with the naturally spawned salmon. For example, the District of Oregon found in *Alsea*, based on NMFS' own scientific and factual record, that

> hatchery spawned coho are likely not "substantially reproductively isolated" from naturally spawned coho because, once released from the hatchery, it is undisputed that "hatchery spawned coho" and "naturally spawned coho" within the Oregon Coast [population] share the same rivers, habitat, and seasonal runs. In addition, hatchery spawned and natural coho are the same species, and interbreed when mature.

Alsea, 161 F. Supp. 2d at 1162-63.

In addition, the ESA requires NMFS to make listing determinations after conducting a review of the status of the *species*. 16 U.S.C. § 1533(b)(1)(A). Thus, when determining whether a salmon population warrants listing under the ESA, NMFS must conduct a review of the status of the *species* or the distinct population segment of the *species*—not merely a portion of the salmon population. However, NMFS' Policy allows it to, first, review the naturally spawned portion in isolation, then review the hatchery portion to determine if it is fit to also list as a threatened species, and, if so, then list the entire population of both hatchery and naturally spawned salmon. But, the District of Oregon clearly held:

> Once NMFS determined that hatchery spawned coho and naturally spawned coho were part of the same [population], the listing decision should have been made without further distinctions between members of the same [population].

Alsea, 161 F. Supp. 2d at 1162.

Most interestingly, NMFS states it will exercise its authority under Section 4(d) of the ESA to allow the harvest of hatchery salmon that are listed as a threatened species but which are, inexplicably, "surplus" to the conservation and recovery needs of the listed species. *See*

http://www.nwr.noaa.gov/AlseaResponse/20040528/hlp-frn-language.pdf at 6. Apparently, there are simply "too many" salmon for NMFS to protect them all. Yet, if *any* salmon are "surplus to recovery needs," then how can salmon be truly threatened with extinction?

Under the Policy, NMFS would list as threatened both hatchery and naturally spawned salmon, but treat hatchery salmon differently (again, as a "subpopulation") by exempting them from ESA protection. However, the ESA states:

> Whenever any *species* is listed as a threatened *species* . . . the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of *such species*.

16 U.S.C. § 1533(d) (emphases added). Clearly then, the ESA contemplates protective regulations promulgated for the entire listed population—not merely for certain, preferred members of the species population. If NMFS may not distinguish between members of a species for listing purposes, neither may it make the same distinction when issuing protective regulations under the same ESA section.

The District of Oregon's clear language, as well as its logic and reasoning, in *Alsea* bears this out:

> The central problem with the NMFS listing decision . . . is that it makes improper distinctions, below that of a [population], by excluding hatchery coho [] from listing protection even though they are determined to be part of the same [population] as natural coho [].

Alsea, 161 F. Supp. 2d at 1162. The court explained:

> [T]he NMFS listing decision creates the unusual circumstance of two genetically identical coho salmon swimming side-by-side in the same stream, but only one receives ESA protection while the other does not. The distinction is arbitrary.

Id. at 1163.

The ESA does not contemplate treating some members of a species differently than other members of the same population when they all exist in the *same* rivers, the same natural ecosystems, and interbreed together. Thus, NMFS' Policy and listings focusing on "naturally spawned" salmon violates the ESA and are illegal.

The origin of the illegality is NMFS' misinterpretation of the ESA's purpose. Congress stated that the purpose is

> to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species.

16 U.S.C. § 1531(b). Clearly, Congress contemplated that species first be listed, and *then* their ecosystems conserved. NMFS, however, employs the ESA as a type of land use statute under which it may conserve ecosystems for a species regardless of whether it otherwise justifies listing. Rather than following Congress' stated ESA purpose, NMFS redefined the ESA's purpose as one related to conservation biology, employing the ESA to conserve the genetic diversity of species and the ecosystems they inhabit. Yet, the goal of conserving the genetic diversity of a species is not in the ESA's language, and NMFS has no authority to change the law where Congress has not expressly allowed it to do so.

All this leads to the inescapable conclusion that if NMFS would merely "count" all the salmon, it would find no justification exists for the salmon listings that are causing the "water wars" we are experiencing across the Western states. For almost five years now, we've been reading reports of record returns of salmon up and down the West coast, not seen since 1938. But, NMFS' preference for "naturally spawned" salmon, on the basis that hatchery salmon are "inferior," is a classic example of federal bureaucrats asking the rest of us to rely merely on their belief system, rather than the state of established knowledge.

The buck must stop with Congress. This Committee and others recently before it have convened in a state of alarm over the ESA and its implications on our way of life. Testimony is taken, statements are issued, posturing is made. Yet, the solution is clear and simple: Exercise your oversight authority to force a rogue federal agency and its agenda-driven bureaucrats to adhere to a plain and common sense federal court decision with which NMFS says it agrees. Simply, "count" all the salmon.

NMFS justifies its needless salmon listings on perceived distinctions between hatchery and naturally spawned salmon. But, NMFS' justification is wrong—both on a factual level and from a legal perspective.

Factually, hatchery salmon spend a very brief portion of only the beginning of their lives in a hatchery. When released, their instincts take over. They then live their lives side-by-side with the naturally spawned salmon in the *same* natural ecosystems. They forage, feed, and avoid predators and fishermen while making their way to the ocean. Their instincts eventually instruct them to return to their native streams and spawn—just like the naturally spawned salmon. They would spawn naturally if left alone and large numbers of them *do*.

Thus, the question becomes, "how 'wild' do they have to be?"

NMFS is also "wrong" from a legal and public policy perspective. NMFS is wrong because its arguments concerning the "fitness" of hatchery salmon are irrelevant under the ESA, which concerns only the issue of whether a fish is or is not a member of the species—not how it came to be a member of the species, or whether one fish is as "good" as other members of that fish species.

Instead, NMFS' justification concerns a public policy question: Whether the ESA *should* treat

hatchery salmon equally with naturally spawned salmon.
The ESA, as it exists currently, does not allow NMFS to recognize only designer-label, or preferred, members of a species. Instead, the only relevant scientific question is: "Are they, or are they not, the same species?" On that issue, 100% of scientists agree, "yes, hatchery salmon are the same species as naturally spawned salmon." Thus, NMFS must treat them all the same. After all, Congress did not label the ESA the "Endangered Species We Prefer Act."

Is that good public policy? Maybe, maybe not—opinions differ. However, under our system of government, those who think treating hatchery and naturally spawned salmon equally is not good public policy have a single option: they must have Congress rewrite the ESA. Otherwise, as currently written, the ESA does not allow government bureaucrats to wade into a stream to cherry pick the salmon it likes and the salmon they do not like.

The courts ruled that NMFS' slippery salmon science was illegal almost four years ago. Meanwhile, NMFS still forces people throughout the Western states to comply with its burdensome ESA land and water regulations, under the threat of civil and criminal punishment, to protect salmon that never warranted listing under the ESA. What adds to the lunacy is that 50% percent of reported government ESA expenditures are for just seven species, just 0.6 percent of the ESA list—and five of those seven species are various salmon species. *See Accounting for Species: The True Cost of the Endangered Species Act*, Randy T. Simmons and Kimberly Frost, at page v, http://www.perc.org/publications/articles/esa_costs_exec.

Congress should force NMFS to comply with the law and return common sense to the ESA. If Congress is truly committed to improving the ESA, it must consider resolving the issue of "what constitutes a salmon species for ESA purposes."

However, Congress should consider other ESA aspects as well.

For example, protection for land owners is essential to successful ESA implementation. Approximately 75% of all listed species have habitat on private property. *See Accounting for Species* at 10. As a result, the government drastically curtails use of that property, if not prohibits it altogether. But property owners are not compensated for this loss of use. This is counterproductive because it discourages landowner cooperation and voluntary conservation.

Under the ESA, landowners can be "prosecuted, fined, jailed, and ordered to pay restitution" if they harm a listed species without federal approval. *Id*. "Harm" is widely defined and may include modification of species habitat. *Id*. In effect, the federal government exercises a veto power over land and water use which might impact a species' habitat. The impact on landowners is severe. As Supreme Court Justices Antonin Scalia and Clarence Thomas argued in dissent in *Babbitt v. Sweet Home Chapter of Communities for Great Oregon*, 515 U.S. 687, 714 (1995), such restrictions "impose[] unfairness to the point of financial ruin—not just upon the rich, but upon the simplest farmer who finds his land conscripted to national zoological use."

Providing landowners and water users with compensation or other economic incentives, when land or water is taken out of productive use, is not only fair but, constitutionally required.

Besides encouraging cooperation and satisfying fundamental notions of fairness, compensating landowners and water users serves another important societal purpose: it acts as a restriction on federal power by limiting the incentive of the government to take more land and water than needed for wildlife conservation. Under the ESA, the federal government essentially "acquires" land and water at no cost. With the stroke of a pen, land and water become protected habitat, with all its attendant restrictions. The natural result of a government that regulates without cost is a government that regulates without end.

Aside from these general observations that species protection should involve a balance between conservation and private property rights, between wildlife and people, other more specific areas of ESA concern merit consideration.

1. "Best Available" Scientific Evidence

The ESA requires the listing of threatened or endangered species, and the designation of "critical habitat," based only on the "best available" scientific evidence. *See* 16 U.S.C. § 1533. However, both the agencies and the courts have interpreted "best available" to mean any evidence whatsoever. This results in unnecessary listings and overly broad "critical habitat" designations. For example, in a July 15, 1998, study entitled *Babbitt's Big Mistake: The Real Story Behind the Endangered Species Recovery Announcement*, the National Wilderness Institute documented the following:

> [D]ata error has been the most common actual mason for a species to be removed from the endangered species list. Species officially removed because of data error include: the Mexican duck, Santa Barbara song sparrow, Pine Barrens tree frog, Indian flap-shelled turtle, Bahama swallowtail butterfly, purple-spined hedgehog cactus, Tumamock globeberry, spineless hedgehog cactus, McKittrick pennyroyal and cuneate bidens. While officially termed 'recovered,' the Rydberg milk-vetch and three birds species from Palau owe their delisting to data error (*see* Delisted Species Wrongly Termed Recovered by FWS, p. 16). Many of the currently listed species have been determined to be substantially more numerous and to occupy a much larger habitat than believed at the time of listing (*see* Environment International, Conservation Under the Endangered Species Act, 1997).

Publications, Studies, Reports, Legislative Briefs at http://www.nwi.org

"Best available" science is often not peer reviewed. Currently, the agencies use peer review on an informal, ad hoc basis. This has proven inadequate as events in the Klamath area have shown. In 2001, the Biological Opinion (BiOp) for the Klamath Project concluded that any water diversions for irrigation purposes would jeopardize listed salmon and sucker fish, although the BiOp ignored reliable data that showed that water diversions would not jeopardize the fish. Nonetheless, the Bureau of Reclamation prohibited all water diversions from the Klamath Project to Klamath farmers who depended on irrigation water from the Project. A firestorm of protests followed calling on the Administration to take a closer look at the data for 2002. In response, the Administration subjected the data to "peer review" by the National Academy of

Sciences. An expert scientific committee of that body subsequently determined that the 2001 BiOp was faulty because the "best scientific and commercial data" showed that water diversions for irrigation would not jeopardize the listed fish.

2. Proof of Harm

Section 9 of the ESA prohibits the "taking" of listed species. 16 U.S.C. § 1538(a)(1)(B). The term "take" means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C. § 1532(19). The term "harm" means:

> an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

50 C.F.R. § 17.3. The United States Supreme Court upheld the definition in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, but the FWS has attempted to "read out" the requirement of actual injury in its ESA implementation. For example, in *Arizona Cattle Growers' Association v. Fish and Wildlife Service*, 273 F.3d 1229 (9th Cir. 2001), the FWS argued it could prohibit grazing on federal land even thought it had no proof of harm to any species. Although the court rejected this argument, the FWS has not embraced the court decision.

3. Private Lands v. Public Lands

Even when public land alone will provide sufficient habitat to conserve listed species, the government designates vast amounts of private property as "critical habitat"—primarily because it has little incentive not to. The Alameda whipsnake is a perfect example. When the whipsnake was listed, the FWS reported that only 20% of the snake's known habitat was on private land and that this land was not essential to the species' conservation. 65 Fed. Reg. 58935. However, when it designated "critical habitat," the FWS included not only occupied habitat but "potential" habitat that did not contain the physical or biological features essential to the species' conservation. This resulted in the inclusion of private land constituting 61% of the total "critical habitat" area of 406,598 acres. *Id*. at 58937. This and other numerous "critical habitat" designations have been successfully challenged in court as overly broad.

4. Existing Federal Contracts

To protect listed salmon and sucker fish in California and Oregon, in 2001, the Bureau of Reclamation breached its decades-old contract to provide irrigation water to Klamath farmers from the Klamath Water Project that was built to provide such water. This resulted in a drastic loss of jobs and livelihoods when local farmers were unable to water their crops on farms that had been productive for generations. Because the Bureau broke its contract, a suit against the federal government for up to $1 billion in damages has been filed in federal court. *Klamath Irrigation District v. United States* (Fed Claims, No. 01-591 L).

5. "Reasonable and Prudent Alternatives"

Section 7 of the ESA, 16 U.S.C. § 1536, allows the "taking" of listed species if "reasonable and prudent alternatives" are adopted to mitigate the impact of a federally approved project. This means a project can go forward with alterations designed to minimize impacts on protected species. However, the ESA does not define the term "reasonable and prudent alternatives." As a result, federal agencies often impose "alternatives" that nullify the project.

For example, when the Bureau of Reclamation considered "reasonable and prudent alternatives" for the Klamath Irrigation Project, the Bureau did not consider alternative ways of providing irrigation water to the Klamath farmers, but rather coopted the Project for the sole purpose of providing water for protected fish. Likewise, federal agencies often require "reasonable and prudent alternatives" that are not economically feasible for the project applicant, such as the use of expensive fish screens by a small water irrigation district. Such "alternatives" may be environmentally "prudent," but they are not "reasonable" if they cannot be carried out consistent with the purpose of the project. The clear intent of section 7—to facilitate otherwise legal projects that would not jeopardize a species with sensible modification—is compromised.

6. Essential Habitat

The ESA defines "critical habitat" to include only those areas the species actually occupies that are essential to the species' conservation as well as those areas that are unoccupied by the species, at the time of listing, that the Secretary determines are essential for the species' conservation. 16 U.S.C. § 1532(5). However, the FWS and NMFS never make such a finding. Rather, they rely on the species' historical range and include potential habitat areas in the "critical habitat" designation. In effect, they take the term "essential" to mean nothing more than "desirable."

7. "Adverse Modification"

The designation of "critical habitat" has major repercussions for landowners and water users. For example, "critical habitat" has been designated for only a portion of California's more than 290 federally-listed species, but those habitat designations include large areas of the State (i.e., probably between 12 and 15 million acres or 12% to 15% of the area of the state). By the time "critical habitat" is designated for all the listed species, California will have been blanketed many times over.

Under section 7 of the ESA, federal agencies must ensure that any activities they authorize, fund, or carry out are not likely to "result in the destruction or adverse modification" of "critical habitat." 16 U.S.C. § 1536(a)(2). The ESA does not define the term "adverse modification." Although federal regulations require adverse modification to be "substantial," environmental activists challenge even small changes. As a result, land and water use can be severely limited, or prohibited altogether, without affording significant species protections. Congress tried to avoid the onerous impacts of "critical habitat" when it amended the ESA in

1978 by limiting the scope of the designation to "essential" habitat areas. However, the FWS and NMFS continue to designate overbroad "critical habitat" areas while environmental litigants argue that "adverse modification" should preclude even minor changes to the land.

8. "Distinct Population Segments"

The ESA defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." 16 U.S.C. § 1532(16). The term "distinct population segment" has no definite meaning and allows the FWS and NMFS to expand or contract a regulated population by arbitrarily drawing either a large circle or a small circle around the target species. This results in inconsistent and arbitrary designations of "distinct population segments" that have no relation to accepted biological standards. For example, rather than designating genetically identical Pacific Coast salmon as one species, NMFS divided them up into separate genetic groups, which can be as small as a specific stream or as large as several watersheds. In contrast to salmon, however, NMFS decided that Puget Sound orcas did not constitute a population segment distinct from their cousins in Alaskan waters. In effect, the agencies are taking the ESA's broad language and inventing their own biology that is both uncertain and scientifically unjustified.

Species protection at "whatever the cost" does not ensure a better life for future generations. To many, there are other values of equal or greater worth, like home ownership—and water use. Species protection at "whatever the cost" does not even ensure species protection. This is the travesty of the ESA; it has not improved the condition of listed wildlife and plants.

I wish to thank the Committee for this opportunity to provide this testimony and hope this analysis will help the Committee as it considers improving the ESA.

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